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Proposed programme budget for the biennium 2018-2019

Request for a subvention to the United Nations Institute for Disarmament Research resulting from the recommendations of the Board of Trustees of the Institute on the work programme of the Institute for 2018-2019

Note by the Secretary-General

Summary

In section IV, paragraph 2, of its resolution 60/248, the General Assembly endorsed the proposal that the request for a subvention to the United Nations Institute for Disarmament Research (UNIDIR) be submitted for review and approval by the Assembly on a biennial basis in the context of its consideration of the proposed programme budget for the related biennium.

In that context, and in accordance with the provisions of the statute (see General Assembly resolution 39/148 H, annex, article VIII, para. 3) and resolution 70/69, and in the light of the recommendations contained in the report of the Secretary-General on the work of the Advisory Board on Disarmament Matters (A/70/186), the Assembly is requested to approve the proposed subvention in the amount of $2,074,700 to UNIDIR from the regular budget of the United Nations for the biennium 2018-2019. The related provision is included under section 4, Disarmament, of the proposed programme budget for the biennium 2018-2019 (A/72/6 (Sect. 4) and Corr.1).

The attention of the General Assembly is drawn to paragraphs 38 to 40 of the report of the Secretary-General on the work of the Advisory Board on Disarmament Matters (A/72/185).

* A/72/150.

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1. The present report is submitted to the General Assembly in the context of its consideration of a subvention to the United Nations Institute for Disarmament Research (UNIDIR) from the regular budget of the United Nations for 2018-2019.

2. In operative paragraph 9 of its resolution 70/69, the General Assembly requested the Secretary-General, as an exceptional, one-off measure to preserve the future of the Institute and without setting a precedent, to submit, in the context of the programme budget for the biennium 2018-2019, a funding proposal taking into account additional resources in the light of the recommendations contained in the latest report of the Secretary-General on the work of the Advisory Board on Disarmament Matters (A/70/186). The Assembly also requested the Secretary-General to commission an assessment by an independent third party with a mandate to prepare a report on the future structural, financial, administrative and operational aspects of UNIDIR, outlining a sustainable and stable funding structure and operating model as required to achieve the mandate and objectives of the Institute beyond the biennium 2018-2019, and to report in that regard to the Assembly at its seventy-third session, taking into account the aforementioned assessment.

3. As informed by the Secretariat at the time of the adoption of resolution 70/69, an internal assessment of the core institutional staffing requirements of UNIDIR was carried out in 2016 in order to determine how the recommendations of the Advisory Board would be reflected in the proposal of the Secretary-General. That assessment included the conclusion that a core staff of four was appropriate for the essential institutional element of UNIDIR (see A/72/154). Specifically, it was concluded that the core staff of UNIDIR should be composed of the following posts: one Director (D-2), one Chief of Operations (P-5), one Finance and Budget Officer (P-3) and one Administrative Assistant (General Service (Other level)).

4. At its sixty-eighth session, held in New York from 28 to 30 June 2017, the Advisory Board on Disarmament Matters, in its capacity as Board of Trustees of the Institute, approved, for submission to the General Assembly, the report of the Director of the Institute on its activities for the period from January to December 2016 and the proposed programme of work and financial plan for 2017 and 2018 (see A/72/185). The financial information contained in the annexes to the present report is consistent with that contained in the report of the Director.

5. At the same meeting, the Board also considered the question of the subvention from the United Nations regular budget to the Institute and strongly recommended that the subvention be approved (see A/72/185, para. 38). The Board also strongly supported a one-off increase in the regular budget subvention for the biennium 2018-2019, as recommended in General Assembly resolution 70/69. The Board noted that the resolution had been adopted by consensus.

6. The Board reiterated its previous conviction that the minimum institutional structure of UNIDIR should consist of five posts (see A/72/185, para. 39). In the view of the Board, in order to ensure the operational sustainability and independence of the Institute, the annual subvention should be increased to cover the costs of all the institutional staff, including the position of Chief of Research, which would further strengthen research design and integrity.

7. The Board also looked forward to the independent third-party assessment of UNIDIR, expected to be carried out in early 2018, to be followed by a report of the Secretary-General, and stressed that the sustainable and stable funding structure and operating model outlined in the report of the Secretary-General must respect the mandate and objectives of the Institute, as contained in the statute of the Institute (see A/72/185, para. 40).

8. The proposed programme budget of the United Nations for the biennium 2018-2019, under section 4, Disarmament (A/72/6 (Sect. 4) and Corr.1), contains a provision of $2,074,700, including the funding proposal discussed in paragraph 2 above, for the one-off increase in the subvention from the regular budget to UNIDIR for the biennium. Pursuant to General Assembly resolution 71/274, this amount will be subject to recosting in accordance with the established procedures.

9. The provision of $2,074,700 includes an amount of $1,774,700 for the core institutional staffing funding requirements of UNIDIR and an amount of $300,000 for an assessment by an independent third party with a mandate to prepare a report on the future structural, financial, administrative and operational aspects of the Institute, outlining a sustainable and stable funding structure and operating model as required to achieve the mandate and objectives of the Institute beyond the biennium 2018-2019, as requested by the General Assembly in its resolution 70/69. Resources relating to the above-mentioned assessment will be managed and implemented by the Office for Disarmament Affairs in close collaboration with the United Nations Office at Geneva.

10. Under section IV of General Assembly resolution 44/201 B, entitled "Subvention from the regular budget to the United Nations Institute for Disarmament Research", the Secretary-General is required to report annually to the Assembly on the situation of the Institute. In that context, the financial situation of the Institute, details of which are included in annexes I and II to the present note, may be summarized as follows:

(a) Total revenue for 2017 is estimated at $3,577,000, from the following sources: voluntary contributions ($3,120,000); investment income ($11,000); other revenue ($18,000); and other transfers and allocations ($428,000), including the 2017 portion of the subvention from the United Nations regular budget. Total revenue for 2018 is estimated at $3,490,000, from the following sources: voluntary contributions ($3,016,000); investment income ($16,000); other revenue ($24,000); and other transfers and allocations ($434,000), including the 2018 portion of the subvention from the United Nations regular budget.[1] It is also estimated that, of the total revenue, approximately 85 per cent will be used for special projects and 15 per cent for other purposes, including administrative costs;

(b) Total expenditure for 2017 is estimated at $2,531,000, including a provision of $119,000 for programme support costs. Requirements for 2018 are estimated at $2,422,000, including $106,000 for programme support costs;

(c) Surpluses or funds at the end of 2017 and 2018, estimated at $1,046,000 and $1,068,000, respectively, will be committed in accordance with donor agreements and United Nations requirements.

11. Estimates of income from voluntary contributions, broken down by country, are not included in the present note. This is in line with the report of the Director of the Institute, which bases revenue and expense estimates on the average of the past three years for 2017 and four years for 2018, with a projected increase of 1 per cent (see A/72/154, annex III). In the absence of agreed funding commitments, a country-by-country estimate cannot be provided in advance.

12. It is recalled that the General Assembly, in its resolution 60/248, endorsed the proposal that the request for a subvention to the Institute be submitted for review and approval by the Assembly on a biennial basis in the context of its consideration

[1] It should be noted that the amount of $434,000, under other transfers and allocations, does not include the proposed increase in the subvention to UNIDIR from the United Nations regular budget. With the proposed increase, the amount under other transfers and allocations for 2018 would be $1,007,500 for 2018.

of the proposed programme budget for the related biennium. In addition, as mentioned in paragraph 2, the Assembly, in its resolution 70/69, requested the Secretary-General to submit, in the context of the programme budget for the biennium 2018-2019, a funding proposal taking into account additional resources in the light of the recommendations of the Advisory Board on Disarmament Matters.

13. **Accordingly, the General Assembly is hereby requested to approve a subvention to UNIDIR of $2,074,700 (before recosting) from the regular budget of the United Nations for the biennium 2018-2019, the provision for which has been included under section 4, Disarmament, of the proposed programme budget for the biennium 2018-2019.**

Annex I

Actual revenue and expenses for 2015, 2016 and the first quarter of 2017[a]

(Thousands of United States dollars)

Description	*2015*	*2016*	*First quarter 2017*
Revenue			
Voluntary contributions[b]	2 403	2 778	63
Investment revenue	11	27	15
Other transfers and allocations	524	440	278
Other revenue	30	37	3
Total revenue	**2 968**	**3 282**	**359**
Expenses			
A. Direct administrative costs			
Employee salaries, allowances and benefits	1 427[c]	1 193[d]	274[e]
Non-employee compensation and allowances	176	576[f]	163[g]
Grants and other transfers	39	0	0
Supplies and consumables	0	1	0
Travel	101	216	59
Other operating expenses	213	95	39
Other expenses	8	20	1
Subtotal	**1 964**	**2 101**	**536**
B. Programme support and prorated expenses	110	79	28
Total expenses (A+B)	**2 074**	**2 180**	**564**
Surplus/(deficit) for the year[h]	**894**	**1 102**	**(205)**

[a] Figures are from United Nations Institute for Disarmament Research (UNIDIR) statements of financial performance for the years 2015 and 2016, which were prepared in accordance with the International Public Sector Accounting Standards.

[b] Contributions are accounted for in the year in which the pledge is signed, for the current and future years.

[c] Institutional staff costs in 2015 amount to $996,438.

[d] Institutional staff costs in 2016 amount to $1,079,890.

[e] Institutional staff costs for the first quarter of 2017 amount to $244,399.

[f] $31,951 corresponds to the travel of consultants.

[g] $15,671 corresponds to the travel of consultants.

[h] The timing of the receipt of funding from donors and the implementation period of the relevant projects and activities of UNIDIR have an impact on this number at year end.

Annex II

Estimated resource requirements for 2017 and 2018[a]

(Thousands of United States dollars)

Description	*2017 (estimates) (1)*	*2018 (estimates) (2)*	*Increase/(decrease) (2-1)*
Revenue			
Voluntary contributions	3 120	3 016	(104)
Investment income	11	16	5
Other transfers and allocations[b]	428	434	6
Other revenue	18	24	6
Total revenue	**3 577**	**3 490**	**(87)**
Expenses			
A. Direct administrative costs			
Employee salaries, allowances and benefits	1 759	1 574	(185)
Non-employee compensation and allowances	213	337	124
Grants and other transfers	60	40	(20)
Supplies and consumables	3	2	(1)
Travel	112	147	35
Other operating expenses	253	201	(52)
Other expenses	12	15	3
Subtotal	**2 412**	**2 316**	**(96)**
B. Programme support and prorated expenses	119	106	(13)
Total expenses (A+B)	**2 531**	**2 422**	**(109)**
Surplus/(deficit) for the year[c]	**1 046**	**1 068**	**22**

[a] Projections for 2017 and 2018 were calculated as an average of past years, starting with 2014, plus 1 per cent.

[b] Pursuant to General Assembly resolution 70/69, an increase in the subvention from the regular budget in an amount of $1,524,700, as a one-off measure to preserve the future of the United Nations Institute for Disarmament Research (UNIDIR), is being requested for approval by the General Assembly for the biennium 2018-2019. This is in addition to the annual subvention (and other transfers and allocations) provided as part of UNIDIR projections for 2018. The increase includes a funding requirement for core institutional staffing and an amount of $300,000 for an assessment by an independent third party. Resources relating to the assessment will be managed by the Office for Disarmament Affairs in close collaboration with the United Nations Office at Geneva (see A/72/6 (Sect. 4) and Corr.1).

[c] The timing of the receipt of funding from donors and the implementation period of the relevant projects and activities of UNIDIR have an impact on this number at year end.

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Seventy-second session
Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights**

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, submitted in accordance with Human Rights Council resolutions 27/21 and 30/2. In the report, the Special Rapporteur reviews key developments regarding unilateral sanctions applied to certain countries and addresses certain aspects of the issue of extraterritoriality in relation to unilateral sanctions.

* A/72/150.

** The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur of the Human Rights Council on the negative impact of unilateral coercive measures on the enjoyment of human rights

Summary

The present report reviews key developments regarding unilateral sanctions applied to certain countries and addresses certain aspects of the issue of extraterritoriality in relation to unilateral sanctions. The report analyses some legal issues related to the practice of "extraterritorial sanctions", as well as of the concept of "extraterritorial obligations" of States in relation to sanctions. The report is to be read in conjunction with the report of the Special Rapporteur to the Human Rights Council at its thirty-sixth session (A/HRC/36/44), which focuses on the issues of remedies and redress for victims of unilateral coercive measures.

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I. Introduction

1. The present report is the third report submitted by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights to the General Assembly pursuant to Human Rights Council resolution 27/21 (2014). In that resolution, the Special Rapporteur was requested, inter alia, to gather all relevant information, wherever it may occur, including from Governments, non-governmental organizations and any other parties, relating to the negative impact of unilateral coercive measures on the enjoyment of human rights.

2. The report also addresses aspects of the issue of extraterritoriality in relation to international sanctions, building on the most recent report of the Special Rapporteur to the Human Rights Council (A/HRC/36/44). The Special Rapporteur believes that recent attempts to apply domestic sanctions extraterritorially constitute one of the most significant developments in sanctions practice, and that they thus call for special attention. He is also of the view that clarifying the issues relating to the existence, nature and extent of extraterritorial obligations of States when applying international sanctions, is of the utmost importance. The need for such clarification is logically implied in his mandate to promote accountability with respect to sanctions and to seek ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights (see Human Rights Council resolution 27/21, para. 22). Indeed, in legal terms, the existence of a right to a remedy presupposes the violation of a substantive right (subject to protection under relevant human rights instruments) on the part of the State applying sanctions, which in turn requires that the international responsibility of that State for an internationally wrongful act be duly established. It is thus critical in that process to determine whether, and to what extent, States applying international sanctions are subject to extraterritorial obligations vis-à-vis individuals outside their territory and not subject to their jurisdiction, and in particular vis-à-vis persons living in the territory or otherwise subject to the jurisdiction of the targeted country who are affected by the sanctions.

3. The present report supplements the recent report that the Special Rapporteur submitted to the Human Rights Council on this issue (A/HRC/36/44). That report contained analyses, inter alia, of some legal issues related to the practice of "extraterritorial sanctions", as well as of the concept of "extraterritorial obligations" of States in relation to sanctions. As to possible remedies for victims, the report presented options for the establishment of specialized compensation commissions for victims of unilateral coercive measures. The report also contained, in the annex, the outcome document of the meeting of the expert working group convened in Geneva on 3 June 2017 to discuss the possible elements of two key recommendations of the Special Rapporteur, namely: (a) a register of unilateral sanctions likely to have a human rights impact; and (b) a draft declaration of the General Assembly on unilateral coercive measures and the rule of law.

II. Activities of the Special Rapporteur

4. A summary of the latest activities of the Special Rapporteur is contained in his report to the Human Rights Council (see A/HRC/36/44, paras. 9-14).

III. Recent developments regarding the use of unilateral sanctions

5. The past year has seen a number of significant developments regarding the use of unilateral sanctions against a number of countries. While in recent years positive developments had taken place, including the lifting (actual or intended) of various unilateral sanctions regimes, the current trend seems to point to a more frequent — if not systematic — use of unilateral sanctions as a foreign policy tool by certain countries. Owing to the unavailability of centralized and standardized data at the United Nations level, the Special Rapporteur provides, in the present section, rather than a comprehensive "year-in-review" of unilateral coercive measures, a brief overview of key developments that have recently affected certain unilateral sanctions regimes, and addresses some of the human rights concerns raised by these developments.

A. Belarus

6. On 15 February 2016, the European Union lifted most sanctions against Belarus as "an opportunity for the European Union-Belarus relations to develop in a positive environment and walk towards progress through dialogue."[1] The repealed measures included asset freezes and travel bans against 170 individuals, including the President of Belarus, Alexander Lukashenko. Sanctions were also lifted against three defence companies whose listings had been suspended in October 2015. The Special Rapporteur welcomed the lifting of the restrictive measures imposed by the European Union, which had been adopted as "autonomous" measures, that is, outside of the framework of the Charter of the United Nations, which provides for the authority of the Security Council to impose sanctions in situations found to endanger international peace and security.[2]

B. Cuba

7. In a worrying development, the Government of the United States of America has recently reversed the decision of the previous United States Administration to lift the embargo on Cuba, which has been in force for more than half a century and which is widely considered to be in violation of international law[3] and has been condemned as such by most of the international community in a long series of General Assembly resolutions, the most recent of which was resolution 71/5. On 16 June 2017, the White House released a national security presidential memorandum describing the new policy vis-à-vis Cuba.[4] This policy document seeks to end economic practices that benefit the Government and security services of Cuba, to preserve the tourism ban and to continue the economic embargo of Cuba. Pursuant to this guidance, the Office of Foreign Assets Control of the United

[1] See Council of the European Union, Council conclusions on Belarus, 15 February 2016 (3447th Council meeting).

[2] See Office of the United Nations High Commissioner for Human Rights (OHCHR), "United Nations human rights expert welcomes the end of European unilateral sanctions on Belarus", 15 February 2016. Available from http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17070&LangID=E.

[3] See Nigel D. White, *The Cuban Embargo under International Law: El Bloqueo* (Abingdon and New York, Routledge, 2015).

[4] Available from https://www.whitehouse.gov/the-press-office/2017/06/16/national-security-presidential-memorandum-strengthening-policy-united.

States Department of the Treasury has enacted implementation regulations amending the existing Cuba sanctions regime.[5]

8. The Special Rapporteur is concerned that this new policy line, which cuts down expectations raised by the decision of the previous United States Administration, will likely curtail efforts by Cuba to promote economic growth and reform and will continue to negatively affect the enjoyment of human rights of the Cuban population. Such adverse human rights effects have been extensively documented in previous reports (see A/HRC/28/74, paras. 22-28).

C. Democratic People's Republic of Korea

9. On 2 August 2017, the United States President signed into law the Countering America's Adversaries Through Sanctions Act, which provides for a set of wide-ranging additional unilateral sanctions "to counter aggression by the Governments of Iran, the Russian Federation and North Korea".[6] The new legislation imposes extraterritorial sanctions targeting United States as well as non-United States companies which have transactions with the Democratic People's Republic of Korea in any of the affected sectors, including agriculture, aviation, textiles, energy and precious metals. Reportedly, the United States Government also intends to target countries that continue to have economic and financial relations with the Democratic People's Republic of Korea in the near future, and is trying to persuade other countries, including China and the Russian Federation, to "deny North Korea basic needs like crude oil supplies, petroleum fuel supplies".[7]

10. On 5 August 2017, the Security Council adopted resolution 2371 (2017) enacting additional sanctions on the Democratic People's Republic of Korea as a reaction to recent ballistic missile tests conducted by the country and in an effort to deter it from pursuing its nuclear and ballistic missile programs. The new measures included not only the blacklisting of a number of companies, State officials and businessmen of the Democratic People's Republic of Korea, but also a comprehensive ban on imports of a number of products, including coal, iron and seafood, aiming to "choke off a third of the North's $3 billion annual export revenue".[8]

11. In that context, it is questionable whether the imposition of additional and separate unilateral sanctions by one source State, with intended extraterritorial reach, against a country facing major humanitarian and public health challenges (aggravated by the imposition of economic sanctions) is an appropriate means to address perceived security threats. As made clear by the Committee on Economic, Social and Cultural Rights in its general comment No. 8, "the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security" (see E/C.12/1997/8, para. 16). The Special Rapporteur believes that when the Security Council decides to apply sanctions in accordance with

[5] See https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_20170725.pdf.

[6] United States of America, Countering America's Adversaries Through Sanctions Act (H.R. 3364). Available from https://www.congress.gov/bill/115th-congress/house-bill/3364/text.

[7] See Demetri Sevastopulo and Katrina Manson, "Tillerson threatens sanctions on countries with North Korea ties", *Financial Times*, 14 June 2017. Available from https://www.ft.com/content/ee16e434-5058-11e7-bfb8-997009366969.

[8] See Philip Wen, "Exclusive: as sanctions loom, seafood trade slows on China-North Korea border", Reuters, 8 August 2017. Available from https://www.reuters.com/article/us-northkorea-missiles-china-exclusive-idUSKBN1AO1B5.

Article 41 of the Charter, previous unilateral measures adopted by individual States are thereby superseded.[9]

D. Gaza

12. The Gaza Strip remains to this day subject to a severe financial and economic blockade imposed by Israel, the consequences of which have been documented in a number of United Nations documents.[10] The already catastrophic situation in the Gaza Strip is likely to further deteriorate following the additional restrictions on electricity supplies to the Gaza Strip that were implemented in June 2017.[11]

E. Iran (Islamic Republic of)

13. The adoption and promulgation by the United States of the Countering America's Adversaries Through Sanctions Act imposes new unilateral sanctions against the Islamic Republic of Iran and raises the prospect of United States withdrawal from (or denunciation of) the nuclear accords (the Joint Comprehensive Plan of Action) of 2015.[12] These are matters of concern to the Special Rapporteur. Such measures may result in the resumption of the unilateral sanctions regime in force against the Islamic Republic of Iran before the conclusion of the nuclear accords, with all its adverse human rights consequences, as previously documented (see A/HRC/28/74, paras. 32-36).

14. The Special Rapporteur also notes that, according to multiple concordant sources, a number of international investors and financial institutions tend to "overcomply" with United States sanctions.[13]

F. Myanmar

15. The remaining unilateral sanctions imposed on Myanmar by the United States were formally lifted by the then President of the United States in October 2016, when he announced that the United States was willing to "use other means to

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[9] On that point, see *Yearbook of the International Law Commission*, 1992, vol. I, (United Nations publication, Sales No. 94.V.3), 2276th meeting, comments by A. Pellet on the fourth report of the Special Rapporteur on state responsibility .

[10] See A/HRC/28/74, paras. 37-39 , and the report on United Nations Conference on Trade and Development assistance to the Palestinian people: developments in the economy of the Occupied Palestinian Territory (TD/B/62/3).

[11] See Nidal al-Mughrabi and Jeffrey Heller, "Israel reduces power supply to Gaza, as Abbas pressures Hamas", *Reuters*, 12 June 2017 (available from http://www.reuters.com/article/us-israel-palestinians-power-idUSKBN1931XK). On the current situation in Gaza, see, for example, the briefing of the Special Coordinator for the Middle East Peace Process, Nikolay Mladenov, to the Security Council on 25 July 2017, in which he states that "the humanitarian impact of the punishing measures taken against Gaza is appalling. In some parts of Gaza people have experienced electricity cuts of 36 hours. No electricity means no drinking water. Hospitals are struggling to survive. An environmental crisis is in the making" (see S/PV.8011).

[12] See Josh Lederman, "Trump lets Iran deal live, but signals he may not for long", Associated Press, 19 July 2017. Available from https://www.apnews.com/1f62abd00bab46cfadcad72b9af08c64/US-sanctions-more-Iranians,-but-nuclear-deal-stands-for-now.

[13] See e.g. "Iran sanctions: 'It's complicated'", *Deutsche Welle*, 21 April 2016 (available from http://www.dw.com/en/iran-sanctions-its-complicated/a-19206261) and Zahraa Alkhalisi, "Trump keeps scaring investors away from Iran", CNN, 3 August 2017 (available from http://money.cnn.com/2017/08/03/news/economy/iran-slow-investment/index.html).

support the Government and people of Burma in their efforts".[14] It is anticipated that this move will significantly boost the economic growth of the country.[15] The European Union maintains limited sanctions against Myanmar, consisting of an embargo on arms and goods that might be used for internal repression. The previous broader trade, financial and targeted sanctions applied by the European Union against Myanmar were lifted in April 2013 "in view of the developments in Myanmar/Burma and as a means of encouraging positive changes to continue".[16] However, the human rights situation that the sanctions, as well as the lifting thereof, were supposed to address was not substantially affected one way or the other. As indicated by the Special Rapporteur on the situation of human rights in Myanmar on 11 August 2017, there was still major concern that the Government should ensure that security forces exercise restraint in all circumstances and respect human rights in addressing the security situation in Rakhine State.[17]

G. Qatar

16. The restrictive measures initiated in June 2017 by a group of countries, including Bahrain, Egypt, Saudi Arabia, the United Arab Emirates and Yemen, against Qatar raise a number of legal issues. These measures are reported to include targeted action, including the blacklisting of individuals and entities for allegedly supporting terrorism, but also measures of a general nature, such as closing the land boundary between Qatar and Saudi Arabia, restricting Qatari access to the airspace of sanctioning countries for civilian and commercial flights, restricting access of Qatari vessels to ports of sanctioning countries and restricting financial transactions.[18]

17. It appears that these measures have had an economic impact on Qatar, especially on trade and financial transactions. The Special Rapporteur has not yet been able to assess the claims made that some of these restrictive measures may have adverse impacts on the enjoyment by the populations affected of their human rights. However, the Special Rapporteur shares the concerns expressed by the United Nations High Commissioner for Human Rights, who stated in mid-June 2017 that:

> It is becoming clear that the measures being adopted are overly broad in scope and implementation, and have the potential to seriously disrupt the lives of thousands of women, children and men, simply because they belong to one of the nationalities involved in the dispute. Saudi Arabia, the United Arab Emirates and Bahrain have issued directives to address the humanitarian needs

[14] See White House, Office of the Press Secretary, Letter entitled "Termination of emergency with respect to the actions and policies of the Government of Burma", 7 October 2016. Available from https://obamawhitehouse.archives.gov/the-press-office/2016/10/07/letter-termination-emergency-respect-actions-and-policies-government.

[15] See Paul Vrieze, "End of sanctions likely to boost Myanmar economy", *Voice of America*, 19 September 2016. Available from https://www.voanews.com/a/end-of-sanctions-likely-to-boost-myanmar-economy/3514962.html.

[16] See Council of the European Union, decision 2013/184/CFSP of 22 April 2013 concerning restrictive measures against Myanmar/Burma and repealing decision 2010/232/CFSP.

[17] OHCHR, "Myanmar: United Nations rights expert urges restraint in security operation in Rakhine State", 11 August 2017. Available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21968&LangID=E.

[18] See Patrick Wintour, "Gulf plunged into diplomatic crisis as countries cut ties with Qatar", *The Guardian*, 5 June 2017. Available from https://www.theguardian.com/world/2017/jun/05/saudi-arabia-and-bahrain-break-diplomatic-ties-with-qatar-over-terrorism.

of families with joint nationalities, but it appears that these measures are not sufficiently effective to address all cases.[19]

18. Pending a comprehensive review of the restrictive measures affecting Qatar against the background of relevant international law norms, the Special Rapporteur's position on this issue is basically confined to restating that, as a matter of principle, economic, social and cultural human rights must be taken fully into account whenever economic sanctions are decided (see E/C.12/1997/8), and that broad-based measures such as restriction of air, land and sea routes, amounting to a de facto embargo, have the potential to affect not only the economy of the target State, but also the enjoyment of human rights by people from third countries who are economically dependent on dealings with, or who are working in, the target State. In view of its high level of overall per capita income, Qatar has a special responsibility to insulate low-income foreign workers from the adverse human rights impact of the measures. Those measures should be replaced as soon as possible by a search for compromise on points of disagreement between the parties concerned. The Special Rapporteur recognizes that the measures enforced against Qatar do not constitute a blockade but rather an embargo, as they do not affect exchanges of third parties with Qatar.

H. Russian Federation

19. The Special Rapporteur visited the Russian Federation in April 2017 and assessed the impact on the enjoyment of human rights of unilateral sanctions implemented against the country. Based on the data gathered and on interviews with stakeholders, he determined that the unilateral measures had only adversely affected the most vulnerable groups of the population.[20] On the sidelines of his visit to the European institutions in June 2017, the Special Rapporteur was also informed of the extent of the huge losses suffered by the European Union agricultural sector owing to the counter-measures taken by the Russian Federation in retaliation for European Union sanctions.[21]

20. The Special Rapporteur is concerned about the entry into force in the United States of the Countering America's Adversaries Through Sanctions Act, and its additional sanctions against the Russian Federation. The potential direct impact on human rights of these new measures appears a priori limited. However, the significant expansion of the scope and applicability of United States sanctions under the Act to additional sectors of the Russian economy (including financial services, debt capital markets, energy, transportation, telecommunications, information technology, defence and aerospace) and the extraterritorial reach of a number of the new measures, may entail adverse effects on the Russian economy and may

[19] See OHCHR, "Qatar diplomatic crisis: comment by the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein on impact on human rights", 14 June 2017. Available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21739&LangID=E.

[20] See OHCHR, "Visit of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights to the Russian Federation, 24 to 28 April 2017: end of mission statement, preliminary observations and recommendations". Available from http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21543&LangID=E.

[21] On the extent of European Union agricultural losses related to the standoff with Russia, see , for example, Committee of Professional Agricultural Organizations and General Committee for Agricultural Cooperation in the European Union (COPA-COGECA), "European farm demonstration: COPA and COGECA to hold mass demonstration to call for action to improve drastic market situation hit by Russian crisis", press release, 30 July 2015. Available from http://www.copa-cogeca.be/Download.ashx?ID=1402103&fmt=pdf.

jeopardize its recent recovery,[22] and thus have an indirect human rights impact, especially on the poorest.

21. The Special Rapporteur is of the view that this potentially negative impact may be limited if third countries refuse to recognize extraterritorial measures and if they adopt legislative measures designed to protect their nationals and businesses from the effects of extraterritorial sanctions. In the European Union, one such mechanism (known as the "blocking statute") has been in force since 1996 with respect to certain United States sanctions regimes having a purported extraterritorial reach.[23] The Special Rapporteur notes that some countries of the European Union, including Austria, France and Germany, have already voiced their intention to resist these new extraterritorial measures.[24]

I. Sudan

22. During his visit to the Sudan in November 2015, the Special Rapporteur witnessed the negative impact of unilateral sanctions on the enjoyment of a range of human rights by people living there (see A/HRC/33/48/Add.1). The Special Rapporteur issued an end-of-mission statement in which he detailed his findings on the impact of the unilateral measures in force on a range of human rights and deplored, in particular, the "globalization of restrictions" against the Sudan resulting from penalties inflicted on a number of global financial institutions by means of the extraterritorial application of domestic sanctions. This, the Special Rapporteur stressed, has "resulted in a stifling embargo on the economy and on the financial transactions of the Sudan since 2013 as a result of the interruption of most financial relations of the outside world at a time when the management of the internal situation in Sudan was heading towards an improvement". He also stressed that the unilateral sanctions were applied on the Sudan "without any adaptation to the sustained evolution of the internal context to recognize that the situation which prevailed in 1997 is completely different from the current one".[25]

23. During 2016, the Special Rapporteur and the United Nations Independent Expert on the situation of human rights in the Sudan engaged in "quiet diplomacy" to narrow the differences between the Sudan and the United States, aiming to facilitate the access of the Sudan to life-saving medicines and to subsequently relax unilateral coercive measures being applied by the United States. These efforts brought some measure of success. For example, a special procurement unit was set

[22] See "Russia's recovering economy fears US sanctions chill", *Financial Times*, 11 August 2017. Available from https://www.ft.com/content/2af85da0-7e7c-11e7-ab01-a13271d1ee9c.

[23] See Council of the European Union, regulation No. 2271/96 of 22 November 1996, *Official Journal of the European Communities*, No. L 309/1, and joint action 96/668/CFSP of 22 November 1996, *Official Journal of the European Communities*, No. L 309/7, concerning measures protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.

[24] See, for example, Ministry of Foreign Affairs of France, "United States — adoption of sanctions (26 July 2017)" (available from http://www.diplomatie.gouv.fr/en/country-files/united-states/events/article/united-states-adoption-of-sanctions-26-07-17) and Federal Foreign Office of Germany, "Foreign Minister Gabriel and Austrian Federal Chancellor Kern on the imposition of Russia sanctions by the US Senate", press release, 15 June 2017 (available from https://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2017/170615_Kern_Russland.html).

[25] See OHCHR, "Preliminary observations and recommendations of the United Nations Special Rapporteur on the negative impacts of unilateral coercive measures on the enjoyment of human rights", press statement, 30 November 2015. Available from http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16824&LangID=E.

up in Khartoum under the United Nations Mission in the Sudan, with American approval, to make life-saving drugs available.

24. In the final days of his administration, the President of the United States, Barak Obama, decided to relax the comprehensive sanctions regime that the United States had applied to the Sudan for 20 years. On 13 January 2017, he issued executive order 13761 based on a finding that the situation that gave rise to the actions taken in two of the three executive orders forming the basis of the United States embargo of Sudan — executive orders 13067 and 13412 — "has been altered by Sudan's positive actions over the past six months". Pursuant to this decision, the Office of Foreign Assets Control of the United States Department of Treasury issued a general license authorizing most business activities involving United States persons and the Sudan. However, executive order 13761 did not immediately revoke previous executive orders or the relevant Office of Foreign Assets Control sanctions regulations. Rather, it stipulated that most of the United States sanctions would be revoked six months later, provided that the incoming Secretary of State acknowledged that the Government of Sudan had sustained the positive actions that gave rise to the decision.

25. The Special Rapporteur praised the decision by the United States to work towards a permanent lifting of unilateral sanctions against the Sudan. [26] He appreciates the cooperation of the Sudan in this regard and the gratitude formally expressed by the Government of the Sudan to the two mandate holders involved for their role in the process of the lifting of sanctions.[27] On the eve of the six-month deadline, the United Nations country team in the Sudan voiced its own hope to see the sanctions on the country lifted.[28]

26. However, on 11 July 2017, a new executive order was issued extending the review period for three months. It provided for the revocation of those sanctions if the Sudan took certain actions, including "maintaining a cessation of hostilities in conflict areas in Sudan; improving humanitarian access throughout Sudan; and maintaining its cooperation with the United States on addressing regional conflicts and the threat of terrorism".[29]

27. This decision is disappointing. Despite the "general licence" currently applied by the Office of Foreign Assets Control, a number of obstacles to normal trade relations remain, and most foreign investors and business actors are unlikely to engage with, or invest in, the Sudan until sanctions are permanently lifted. The Special Rapporteur emphasizes that "no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to

[26] See OHCHR, United Nations human rights expert welcomes United States decision to lift economic sanctions on the Sudan", 19 January 2017. Available from http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21098&LangID=E.

[27] In a letter dated 20 January 2017, the Permanent Representative of the Sudan to the United Nations Office at Geneva expressed the gratitude of his Government, noting that the "facts presented in your reports and statements helped a lot and contributed significantly in lifting the American sanctions on Sudan and its people. Hence, your efforts contributed remarkably in the enjoyment of many Sudanese of their human rights in health, education, development and other fields". Available from http://www.ohchr.org/Documents/Issues/UCM/Statements/LetterFromAmbassadorSudan.pdf.

[28] See "United Nations hopes for positive decision on United States sanctions relief", statement by the United Nations country team in the Sudan, 10 July 2017. Available from http://reliefweb.int/sites/reliefweb.int/files/resources/UNCT_Statement_on_UN_Hopes_for_Positive_Decision_on_US_Sanctions_Relief_10_Jul_2017_EN.pdf.

[29] See United States Department of State, "The Administration extends Sudan sanctions review period", press statement, 11 July 2017. Available from https://www.state.gov/r/pa/prs/ps/2017/07/272539.htm.

obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind".[30]

J. Venezuela (Bolivarian Republic of)

28. The Special Rapporteur has stressed that sanctions are not the answer to the growing crisis in Venezuela and that the international community should not impose them, as these would worsen the situation of the people of Venezuela, who are already suffering from crippling inflation and a lack of access to adequate food and medicine.[31] Measures that would damage the economy of Venezuela would also have a disruptive effect on the State's institutions, and would likely lead only to violations of the rights of ordinary people.

29. Such measures appear to contravene the Charter of the United Nations (Article 1 (2) and (3) and Article 2(2) and (3)), the principles recognized in the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, the 1970 Declaration on the Principles of International Law concerning friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations and the 1981 Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States. In this regard, the Special Rapporteur shares the view expressed by the Spokesman for the Secretary-General in his statement of 8 August 2017, when he noted that the Secretary General "is convinced that the Venezuelan crisis cannot be solved through the imposition of unilateral measures, but requires a political solution based on dialogue and compromise".[32] Dialogue is indeed the foundation of the peaceful settlement of disputes, and States should therefore engage in constructive dialogue with the Government of Venezuela to find solutions to the challenges facing the country.

30. On a related note, the decision by the United States to blacklist high ranking officials of the Government of Venezuela[33] raised serious concerns, since it appears that it has been implemented in violation of the most basic principles of the rule of law, in particular those relating to due process guarantees. An additional concern is that these allegations may be used as a justification to impose measures aimed at disqualifying foreign State officials who may be deemed to enjoy immunities of jurisdiction in other States under international law.

K. Yemen

31. In April 2017, the Special Rapporteur called for the immediate lifting of the blockade of the war-ravaged port of Al Hudaydah in Yemen to allow the entry of relief supplies and tackle a humanitarian catastrophe in which millions of people were facing famine. He pointed to the unwarranted restrictions on the flow of commercial and humanitarian goods and services into Yemen, involving a variety of

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[30] See the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (General Assembly resolution 25/2625, annex).

[31] See OHCHR, "Venezuela sanctions would worsen plight of suffering people, United Nations expert warns", 11 August 2017. Available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21964&LangID=E.

[32] Available from https://www.un.org/sg/en/content/sg/statement/2017-08-08/statement-attributable-spokesman-secretary-general-venezuela-scroll.

[33] See United States Department of the Treasury, "Treasury sanctions the President of Venezuela", press release, 31 July 2017. Available from https://www.treasury.gov/press-center/press-releases/Pages/sm0137.aspx.

regulatory measures enforced by the coalition forces — including unreasonable delay and/or denial of entry to vessels in this Yemeni port. The Special Rapporteur pointed in particular to the dramatic situation of Al Hudaydah Port, the major lifeline for imports into Yemen, and expressed concern about obstacles to the reconstruction of the port infrastructure, which had slowed humanitarian imports to a trickle, causing vital supplies to be wasted.[34] The European Parliament, in a resolution adopted on 15 June 2017, endorsed the Special Rapporteur's call for the lifting of the aerial and naval blockade imposed on Yemen.[35]

32. At the time of writing, the situation is still a source of concern because of its disproportionate impact on the civilian population. The United Nations Development Programme Country Director in Yemen stated on 1 August 2017 that "current food security crisis is a man-made disaster resulting not only from decades of poverty and under-investment, but also as a war tactic through economic strangulation".[36] The theme of this year's World Humanitarian Day (19 August) — civilians are not a target in armed conflict — applies with particular force to the situation in Yemen.

IV. The issue of extraterritoriality in relation to unilateral sanctions

33. In the current context, in which the issue of the extraterritorial dimensions of unilateral coercive measures is hotly debated in terms of its human rights impact, a certain number of key legal considerations need to be recalled. There are general considerations on the extraterritorial aspects of all unilateral coercive measures, which require the extraterritorial application of relevant human rights instruments. There are also considerations with respect to the particular case of attempts by one source State not only to apply its national legislation to the internal situation in another State but also to coerce third unconcerned States or persons into enforcing similar measures against the targeted State, despite the fact that in their domestic decision-making processes the third States have not decided on any such action. These are often referred to as "secondary" sanctions.

A. Extraterritorial human rights obligations of States

34. States are considered to assume certain extraterritorial obligations under human rights instruments to which they are parties.[37] However, the scope of such obligations remains a matter of contention.[38] In particular, it is sometimes disputed that States are under human rights obligations vis-à-vis individuals who are not their

[34] See OHCHR, "Lift blockade of Yemen to stop 'catastrophe' of millions facing starvation, says United Nations expert", 12 April 2017. Available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21496&LangID=E.

[35] See the European Parliament resolution on the humanitarian situation in Yemen (2017/2727(RSP)), 15 June 2017.

[36] See United Nations News Centre, "Deadly combination of cholera, hunger and conflict pushes Yemen to edge of a cliff' – senior United Nations official", 1 August 2017. Available from http://www.un.org/apps/news/story.asp?NewsID=57294#.WYggUojyjIU.

[37] See Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford, Oxford University Press, 2011) and Guillaume Grisel, *Application extraterritoriale du droit international des droits de l'homme* (Bâle/Paris/Bruxelles, Helbing Lichtenhahn/L.G.D.J./Bruylant, 2010).

[38] See Fons Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights in the work of the United Nations Committee on Economic, Social and Cultural Rights" *Human Rights Law Review*, vol. 11, issue 1 (March 2011).

nationals, who are not present on their territories and over whom they do not otherwise exercise "jurisdiction". This is because human rights treaties are understood to govern only the relationship between a State and its subjects, who are traditionally defined either with reference to their nationality or the territory in which they are present. Under that paradigm, victims of human rights violations must be within the "jurisdiction" of a State in order to be protected by human rights instruments to which the State is party. Indeed, a number of human rights treaties contain jurisdictional provisions that limit the scope of application of the treaty's protection. For example, article 2(1) of the International Covenant on Civil and Political Rights sets out the obligation of each State party to respect and ensure the rights of all individuals "within its territory and subject to its jurisdiction" (see General Assembly resolution 2200 A (XXI), annex). A similar provision is found in article 1 of the European Convention on Human Rights.[39]

35. The International Covenant on Economic, Social and Cultural Rights, however, does not contain such territorial or jurisdictional limitations.[40] Furthermore, it imposes an obligation upon all States to take steps, individually and through international assistance and cooperation, with a view to achieving progressively the full realization of the rights recognized in the Covenant (see General Assembly resolution 2200 A (XXI), annex). This clearly implies that States parties assume certain obligations of an external or international nature.[41] Thus the Covenant can be deemed as setting forth certain extraterritorial obligations for States parties in respect of nationals of, or individuals residing in, third States.[42]

36. The concept of jurisdiction as a sine qua non for the existence and applicability of the legal obligations of States with respect to human rights has been extended over time to address situations in which a restrictive application of the territorial or jurisdictional requirements would de facto prevent the effective implementation of the treaty. Thus, the jurisdiction and corresponding human rights obligations of States have been established with respect to "occupied" territory,[43] and to territory over which a State assumes some form of "effective control".[44]

37. As far as the Covenant is concerned, the Committee on Economic, Social and Cultural Rights has clarified over the years the extent of extraterritorial obligations of States parties.[45] It has stressed, inter alia, that "extraterritorial obligation to respect requires States parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. As part of this obligation States parties must ensure that they do not obstruct another State from complying with its obligations under the Covenant" (see E/C.12/GC/24, para. 29). For example, with regard to the right to water, the Committee indicated in its general comment No. 15 (2002) on the right to water that:

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[39] Article 1 of the Convention reads: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this Convention".

[40] Magdalena Sepulveda and Christian Courtis, "Are extraterritorial obligations reviewable under the Optional Protocol to the ICESCR?", *Nordic Journal of Human Rights* 01/2009 (vol. 27).

[41] Matthew Craven, "The violence of dispossession: extraterritoriality and economic, social and cultural Rights", in *Economic, Social, and Cultural Rights in Action*, Mashood Baderin and Robert McCorquodale, eds. (Oxford, Oxford University Press, 2007).

[42] See, for example, Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights".

[43] See Michal Gondek, *The Reach of Human Rights in a Globalizing World: Extraterritorial Application of Human Rights Treaties* (Antwerp, Intersentia, 2009) and Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights".

[44] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 112.

[45] See Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights".

> To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction (see E/C.12/2002/11, para. 31).

38. The Committee has also clarified the obligations of States parties under the Covenant as regards international sanctions. Those obligations are discussed below.

39. The jurisprudence of the Committee on the extraterritorial application of the Covenant should be regarded as an authoritative, although not legally binding per se, interpretation of the rights and obligations contained in the Covenant.[46] They shall be viewed as "norm-generating instruments", that "over time could contribute to the emergence of customary international legal norms".[47]

40. Such a position — that States assume certain extraterritorial obligations under human rights instruments — is consonant with the customary international law rule which prohibits a State from allowing its territory to be used to cause damage to the territory of another State, a requirement that has gained particular relevance in international environmental law[48] and has been recently affirmed by the Human Rights Council as relevant to the field of the protection of human rights.[49]

41. The jurisprudence of international courts and tribunals contains recent instances of cases where human rights treaties have been found applicable irrespective of a finding of "jurisdiction" or "control" sensu stricto in situations where a State's actions had entailed consequences abroad. Thus, in the *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, the International Court of Justice addressed the extraterritorial scope of the International Convention on the Elimination of all Forms of Racial Discrimination, which, like the International Covenant on Economic, Social and Cultural Rights, does not contain a general jurisdictional clause. In ruling that the provisions of the Convention applied to the actions of the Russian Federation, the International Court of Justice did not find it necessary to first establish that the Russian authorities asserted jurisdiction or some form of authority or control over the persons resident there. It has been noted that: (a) the International Court of Justice focused exclusively on the actions of States parties and left issues of jurisdiction, control and authority aside; (b) the Court seemed to operate on a presumption that human rights treaties applied to extraterritorial acts of the State unless treaty provisions contained a specific territorial limitation; and (c) the broad language suggests that, in the eyes of the

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[46] See Dinah Shelton, "Commentary and conclusions" in *Commitment and Compliance, The Role of Non-binding Norms in the International Legal System*, D. Shelton, ed. (Oxford, Oxford University Press, 2000).

[47] See Helen Keller and Leena Grover, "General comments of the Human Rights Committee and their legitimacy", in *UN Human Rights Treaty Bodies: Law and Legitimacy*, H. Keller and Geir Ulfstein, eds. (Cambridge, Cambridge University Press, 2012), p. 129.

[48] See *Trail smelter case (United States v. Canada), Reports of International Arbitral Awards, vol. III*, p. 1905 (1941); see also the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, adopted by the International Law Commission at its fifty-eighth session (see A/61/10).

[49] See Human Rights Council resolution 21/11, by which the Council adopted the guiding principles on extreme poverty and human rights; see also Nicola Vennemann, "Application of International Human Rights Conventions to Transboundary State Acts", in *Transboundary Harm in International Law: Lessons from the Trail Smelter Arbitration*, Rebecca M. Bratspies and Russell A. Miller, eds. (Cambridge, Cambridge University Press, 2006).

Court at least, this approach is not limited to the International Convention on the Elimination of All Forms of Racial Discrimination, but applies to human rights treaties in general.[50]

42. Such an approach has been labelled a "cause and effect" approach, whereby "persons fall within a State's jurisdiction when a State through lawful or unlawful exercises of power causes human rights violations extraterritorially". Thus, "whether a technical exercise of jurisdiction or not, the type of act instituted by the State will essentially dictate who is affected, who falls within its jurisdiction, the rights violated and the extent of obligations owed".[51] The same approach has been followed, inter alia, by the Inter-American Commission on Human Rights in *Alejandre Jr. et al v. Cuba*, a case in which the Commission found that, in the absence of any territorial control or control of a physical person exercised by the State, the sheer act of bombing established the personal link and brought the victims within the State's authority, thus establishing jurisdiction under the American Declaration of the Rights and Duties of Man.[52] Similarly, in *Drozd and Janousek v. France and Spain* the European Court of Human Rights found that responsibility under the European Convention on Human Rights may be involved because of acts of a State party's authorities "producing effects outside their own territory".[53]

43. The rationale behind such a broad approach, setting aside strict jurisdictional requirements, has been formulated by Rosalyn Higgins as follows: "the law of jurisdiction is about *entitlements to act*, the law of State responsibility is about *obligations incurred when a State does act*".[54] Sigrun Skogly states that:

> The violation of the human rights of individuals by a State outside its jurisdiction would imply that the State has committed an internationally wrongful act, and should not be able to do so with impunity. ... If the protection from human rights treaties is dependent upon States acting within their jurisdiction, the danger is that extra-jurisdiction acts can be carried out without responsibility being triggered.[55]

B. Extraterritorial obligations of States in relation to the imposition of unilateral sanctions

44. The question of whether States' obligations under the International Covenant on Economic, Social and Cultural Rights extend extraterritorially "to the point at which a State imposing sanctions might be held responsible for any consequential deprivation (of the right to food or health care for example) even if the sanctioning State exercised no formal jurisdiction or control over the population concerned",[56] is still debated. The Special Rapporteur shares the view that "it is now widely agreed that human rights treaties may, in principle, impose on States parties obligations not only when they adopt measures applicable on their own territory, but also

[50] See Maarten den Heijer, *Europe and Extraterritorial Asylum* (Oxford, Hart Publishing, 2012).

[51] Eleni Kannis, "Pulling (apart) the triggers of extraterritorial jurisdiction", *The University of Western Australia Law Review*, vol. 40, p. 234.

[52] See Inter-American Commission on Human Rights, *Alejandre Jr. et al v. Cuba*, case 11.589, report No. 86/99, 29 September 1999.

[53] See European Court of Human Rights, *Drozd and Janousek v. France and Spain* (application No. 12747/87, judgment of 26 June 1992, para. 91.

[54] See Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford, Clarendon Press, 1994) (emphasis in original).

[55] See Sigrun I. Skogly, "Extraterritoriality: universal human rights without universal obligations?" in *Research Handbook on International Human Rights Law*, Sarah Joseph and Adam McBeth, eds. (Cheltenham, Edward Elgar, 2010), p. 93.

[56] See Craven, "The violence of dispossession".

extraterritorial obligations, which may include positive obligations going insofar as the State can influence situations located abroad".[57] It seems difficult to deny, in that respect, that international sanctions come within the category of situations where States can influence situations located abroad, and actually do influence situations abroad to the extent that they affect the enjoyment of human rights by populations (or segments of the population) of the target State.

45. In the light of the growing recognition of the existence of extraterritorial obligations of States under human rights instruments, it is reasonable to assume that in the case of international sanctions that have extraterritorial effects by their very nature, a State imposing them should incur liability for human rights violations, even if it does not exercise formal "jurisdiction" or "control" over the population or the territory targeted. This applies all the more to the International Covenant on Economic, Social and Cultural Rights, which, as previously mentioned, does not contain territorial or jurisdictional limitations.

46. Furthermore, the Committee on Economic, Social and Cultural Rights, in its general comment No. 8 (1997) on the relationship between economic sanctions and respect for economic, social and cultural rights, has set out certain obligations of "parties responsible for the imposition, maintenance or implementation of the sanctions, whether it be the international community, an international or regional organization, or a State or group of States". Among these obligations flowing "from the recognition of economic, social and cultural human rights", the Committee identified the obligation to respond "to any disproportionate suffering experienced by vulnerable groups within the targeted country" (see E/C.12/1997/8, paras. 11 and 14).

47. The Committee has stated that "when an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population" (see E/C.12/1997/8, para. 13). The Special Rapporteur is of the view that, whereas in that situation the targeted State is (and remains) under obligation to do its utmost to protect its population, the targeting State is also necessarily ipso facto under an obligation to protect the economic, social and cultural rights of the affected population.

48. Other findings of the Committee set forth obligations under the Covenant in matters of sanctions. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee emphasized that "States parties should refrain at all times from imposing embargoes or similar measures restricting the supply of another State with adequate medicines and medical equipment" (see E/C.12/2000/4, para. 41).

C. Legal consequences arising from the violation of extraterritorial human rights obligations

49. Applying a strict requirement of jurisdiction for victims of human rights violations caused by the extraterritorial actions of a foreign State (especially economic sanctions) would result in a protection gap. This would amount to a paradoxical situation in which victims residing abroad would indeed be deprived of the treaty protection merely because they were not, legally speaking, within the jurisdiction of the foreign State that implemented sanctions affecting them. As mentioned previously, it is important, in this respect, to distinguish between the

[57] See Olivier De Schutter, "A human rights approach to trade and investment policies" (November 2008), para. 3.2. Available at https://www.iatp.org/sites/default/files/451_2_104504.pdf.

concept of jurisdiction and the notion of State responsibility. "Jurisdiction is about entitlements to act (is it lawful for a State to act outside its borders?), while State responsibility is about obligations incurred when a State does or does not act (the legal consequences of extraterritorial conduct)".[58] As a matter of principle, there is no reason to exclude the applicability of the general principles of State responsibility (and/or the responsibility of international organizations as the case may be) in cases of damage caused to a target country by the application of sanctions of source States (or international organizations). The basic principle enunciated in article 1 of the International Law Commission articles on responsibility of States for internationally wrongful acts, that "every internationally wrongful act of a State entails the international responsibility of that State" (see General Assembly resolution 56/83, annex, art. 1) should be deemed to apply equally to wrongful acts of a State entailing damages to the human rights of persons or populations of other countries. As noted by Fons Coomans:

> Normally speaking, States have a right to engage in such bilateral or international activities (jurisdictional dimension), as long as they comply with general rules of international law, for example the non-use of force and respect for human rights. The State responsibility dimension comes into play when the actions or omissions of a State beyond its national border are contrary to its obligations under human rights treaties, that is, where they negatively affect/harm the rights of persons residing in another country.[59]

50. In relation to the international responsibility of a State for unlawful acts, it has even been observed that a State "is under the duty to control the activities of private persons within its State territory and the duty is no less applicable where the harm is caused to persons or other legal interests within the territory of another State".[60] Arguably, the same duty shall apply a fortiori to unilateral sanctions that are directly attributable to the State.

51. Unlawful assertion of jurisdiction through extraterritorial application of domestic sanctions, to the extent that it results in adverse effects, economic or otherwise, on third countries, shall also entail the international responsibility of the targeting State. The basic underlying idea is that States cannot do abroad what they are prohibited from doing at home, namely doing harm and/or violating the rights of individuals.[61]

D. Extraterritorial sanctions with a focus on multilateralization of domestic sanctions policies under international law

52. The Special Rapporteur deems it necessary to draw the attention of United Nations organs and the international community to the harmful consequences of the practice of extraterritorial sanctions (sometimes also referred to as secondary sanctions), that is, sanctions regimes that purport to apply to foreign States and their economic and financial sectors, as well as persons, acting outside the sanctioning

[58] See Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights", pp. 5 and 6.

[59] See Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights", p. 6.

[60] See Ian Brownlie, *System of the Law of Nations: State responsibility, Part I* (Oxford, Clarendon Press, 1983), p. 165.

[61] See F. Coomans, "The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights", p. 6.

country, "notably when they conduct business with individuals, groups, regimes or countries that are the target of the primary sanctions regime".[62]

53. First and foremost, there are strong legal objections to the use of such measures. There is a general understanding that extraterritorial sanctions disregard commonly accepted rules governing the jurisdiction of States under international law,[63] and are thus unlawful.[64] This understanding is reflected in various resolutions of United Nations organs and of other international organizations, and is shared by a large number of countries.[65] For example, since 1992, the General Assembly has annually voiced the condemnation by a vast majority of the international community of the United States embargo against Cuba, citing, in particular, its extraterritorial reach.[66] The European Union has also expressed its position against extraterritorial sanctions in its own guidelines on "restrictive measures" as follows:

> The European Union will refrain from adopting legislative instruments having extraterritorial application in breach of international law. The European Union has condemned the extraterritorial application of third-country legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the member States of the European Union, as being in violation of international law.[67]

54. The Special Rapporteur deems it fair to mention, however, that the European Union "blocking statute" of 1996, under which European Union companies are prohibited from complying with certain extraterritorial sanctions,[68] seems to have been underutilized in practice. Thus the protection granted under this instrument remained to a large extent theoretical. Furthermore, in the light of the strategic importance of continued access to the United States market for most affected European Union businesses, the latter were frequently inclined to waive legal remedies, and preferred "pleading guilty" and entering into settlement agreements with the authorities of the sanctioning State. The Special Rapporteur took note of certain mitigating arguments heard from some European Union officials during his visit in Brussels, according to which in certain cases some European Union banks had actually committed "egregious" breaches of the sanctions regime concerned and had acted in bad faith. Still, the Special Rapporteur is of the view that the European

[62] Tom Ruys, "Sanctions, retorsions and countermeasures: concepts and international legal framework" in *Research Handbook on UN Sanctions and International Law*, Larissa van den Herik, ed. (Cheltenham, Edward Elgar, 2017), p. 28.

[63] See Prosper Weil, "International Law Limitations on State Jurisdiction", in *Extraterritorial Application of Law and Responses Thereto*, Cecil J. Olmstead, ed. (Oxford, International Law Association, 1983), and Michel Cosnard, "Les lois Helms-Burton et d'Amato-Kennedy, interdiction de commercer avec et d'investir dans certains pays", *Annuaire français de droit international*, vol. 42, No. 1 (1996).

[64] See Charlotte Beaucillon, "Practice makes perfect, eventually? Unilateral State sanctions and the extraterritorial effects of national legislation", in *Coercive Diplomacy, Sanctions and International Law*, Natalino Ronzitti, ed. (Leiden and Boston, Brill Nijhoff, 2016).

[65] In addition to the various resolutions of the General Assembly and the Human Rights Council condemning the use of extraterritorial sanctions, the non-aligned countries have firmly rejected this practice. See, for example, Asian-African Legal Consultative Organization resolution 51/S 6 of 22 June 2012, entitled "Extraterritorial application of national legislation: sanctions imposed against third parties".

[66] See resolution 47/19 of 24 November 1992 and subsequent resolutions.

[67] Council of the European Union, Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the European Common Foreign and Security Policy, document 11205/12, para. 52. The same principled opposition to extraterritorial sanctions was reiterated by the European Union upon adoption of the latest General Assembly resolution on the United States embargo against Cuba (see http://eu-un.europa.eu/eu-explanation-vote-united-nations-general-assembly-us-embargo-cuba/).

[68] See Council of the European Union, regulation No. 2271/96.

Union firms concerned were not subject to the jurisdiction of the sanctioning State and therefore were not legally required to comply with such measures.

55. It should also be added that the enactment of domestic legislation with purported extraterritorial reach, resulting in a de facto "multilateralization" of unilateral coercive measures, could be seen as infringing on the competences of the Security Council. Suffice it to recall that under Article 24 of the Charter of the United Nations, States have conferred upon the Security Council primary responsibility for addressing threats to international peace and security. In the Charter system of collective security, "it is the Security Council which has been given the authority to determine the content of the community value or interest in a particular case and consequently that its violation necessitates a collective security response".[69] It is thus highly questionable that any State should take upon itself to impose sanctions that apply worldwide "without borders", without any justifiable right to exercise universal jurisdiction, which is in the purview solely of the Security Council.

56. To the extent that States are bound by human rights obligations when applying sanctions, it is submitted that extraterritorial sanctions may attract the international responsibility of the sanctioning State, not only in relation to its own sanctions, but also in relation to sanctions applied by third countries on the targeted State with a view to complying with extraterritorial measures enacted by the primary sanctioning State. Sanctioning States could thus be held accountable also for the adverse impacts of measures taken by third countries under coercion, that is, under pressure or threat of being submitted to secondary sanctions. Article 18 of the International Law Commission's articles on responsibility of States for internationally wrongful acts may be deemed relevant to such a situation. Article 18 reads as follows:

> A State which coerces another State to commit an act is internationally responsible for that act if:
>
> (a) The act would, but for the coercion, be an internationally wrongful act of the coerced State; and
>
> (b) The coercing State does so with knowledge of the circumstances of the act (see General Assembly resolution 56/83, annex, art. 18).

57. The International Law Commission, in its commentary on the draft articles, mentioned as a case of coercion meeting the requirements of this article, measures that involve intervention, i.e., coercive interference, in the affairs of another State. According to the Commission, such coercion could possibly take the form of "serious economic pressure, provided that it is such as to deprive the coerced State of any possibility of conforming with the obligation breached".[70]

58. There is a need for a solemn reaffirmation of the inadmissibility of extraterritorial sanctions involving an unlawful assertion of jurisdiction by the targeting State, as contrary to international law. This task may possibly be entrusted to the International Law Commission, which in 2006 had already examined a preliminary Secretariat report on extraterritorial jurisdiction, which could form the basis for long-term work on the codification of international law on the matter (see A/61/10, annex E). Alternatively, the International Court of Justice could be requested to issue an advisory opinion on the matter.

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[69] See Danesh Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* (New York, Oxford University Press, 1999), p. 6.

[70] See *Yearbook of the International Law Commission, 2001*, vol. II (Part Two) (United Nations publication, Sales No. E.04.V.17 (Part 2)), p. 70.

59. Extraterritorial (or "secondary") sanctions are likely to entail specific, discrete additional adverse consequences for human rights, including the right to development, going beyond those arising from the use of international sanctions (whether multilateral or unilateral) in general. The Special Rapporteur has submitted that such specific effects lie in the fact that extraterritorial sanctions affect the ability of the targeted country (and its population), as well as of third countries not involved in the dispute between source and target countries, to interact with the global business and financial community. Extraterritorial sanctions may thus have a "chilling" effect on international businesses legally not subject to the jurisdiction of the targeting State, but de facto unwilling to entertain any economic relations with parties in the targeted State that might entail "violating" the provisions of the extraterritorial sanctions regime, and thus might jeopardize their ability to pursue their own business activities in the targeting State. This leads in practice to a phenomenon of "over-compliance" by trading partners of targeted countries that may in turn result in a de facto blockade of the targeted countries. The discrete additional impact of extraterritorial sanctions may also flow from their effects on the targeted State's ability to obtain access to international financial institutions, foreign financial markets and international aid.[71]

60. The extraterritorial application of unilateral sanctions may also have adverse impacts on the enjoyment of human rights in third countries, which are prevented by the operation of the (extraterritorial) foreign law from entertaining economic relations with the target country. This may affect, in particular, developing countries that are traditionally dependent on economic relations with the targeted State and may be less able to withstand restrictions in those economic relations. This may also have an adverse impact on the human rights of individuals and communities that are dependent on trade with, or working as foreign workers in, the target country. Such a situation may affect the realization of the right to development in the third country concerned, in disregard of those human rights instruments which call on all States to promote the right to development in developing countries.[72]

61. Recently, the United States has enacted measures[73] that have the potential to affect the ability of non-United States firms (including European Union firms) to conduct business in the United States, to the extent that they participate in energy projects involving the Russian Federation or Russian parties, especially (but not exclusively) in the construction of Russian energy export pipelines.

62. In that context, the Special Rapporteur noted with interest that, faced with the prospects of adoption of this new extraterritorial sanctions legislation, the Governments of Germany and Austria, in a joint statement, made clear that they "cannot accept a threat of extraterritorial sanctions, illegal under international laws, against European companies that participate in developing European energy supplies",[74] and that France expressed a similar principled rejection of these new extraterritorial measures.[75]

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[71] See, for example, Joy Gordon, "Extraterritoriality: issues of overbreadth and the chilling effect in the cases of Cuba and Iran", *Harvard International Law Journal Online*, vol. 57, Nos. 1-12 (January 2016).

[72] See the Declaration on the Right to Development (General Assembly resolution 41/128, annex), especially articles 3(3) and 4 thereof.

[73] See United States of America, Countering America's Adversaries Through Sanctions Act.

[74] See Federal Foreign Office of Germany, "Foreign Minister Gabriel and Austrian Federal Chancellor Kern on the imposition of Russia sanctions by the US Senate", press release, 15 June 2017 (available from https://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2017/170615_Kern_Russland.html).

[75] See Ministry of Foreign Affairs of France, "United States — adoption of sanctions (26 July 2017)". Available from http://www.diplomatie.gouv.fr/en/country-files/united-states/events/article/united-states-adoption-of-sanctions-26-07-17.

V. Conclusions and recommendations

63. The Special Rapporteur calls for a solemn reaffirmation by the United Nations of the intrinsic unlawfulness of domestic measures, including sanctions, that are intended to apply extraterritorially, absent a valid jurisdictional link recognized by international law. Domestic legislation or measures aimed at extending their effects to nationals or entities of third countries, with the purpose of dissuading them from entertaining lawful commercial (or other) relations with the target country are especially to be condemned as unlawful under international law and in violation of commonly accepted rules of international trade.

64. The Special Rapporteur also calls for an affirmation of the principle according to which the implementation by States of any sanctions having adverse extraterritorial effects on the human rights of individuals within the territory and under the jurisdiction of the targeted State, shall ipso facto entail the responsibility of the targeting State under relevant human rights instruments to protect the human rights of the affected people. The protection granted by such human rights treaties cannot be deemed to be limited by any jurisdictional requirements, the effects of which would be to leave victims unprotected. International sanctions by their very nature aim at extending the targeting State's "influence" to situations located abroad, and this influence should be considered as sufficient to establish the State's jurisdiction under human rights treaties whenever human rights violations occur as a result of the sanctions. Human rights instruments are to be construed as applying to human rights violations committed by States abroad in the exercise of their jurisdiction (lawful or unlawful, de jure or de facto).

65. The Special Rapporteur suggests that the International Law Commission resume its work on extraterritorial jurisdiction, with a view to elaborating on the illegality of sanctions involving the unlawful assertion of jurisdiction by a source State or group of States on target States and a fortiori on third States through the expectation that the latter comply with the domestic sanctions legislation of the source country or group of countries against the target State. Alternatively, the International Court of Justice could be requested by the General Assembly to issue an advisory opinion on that matter.

66. In the light of developments with respect to unilateral policies applied in the case of the Russian Federation, the Special Rapporteur is of the view that there is a strong case for reviewing such policies if vulnerable groups and the right to development are adversely affected, not only in the target countries, but also, to different degrees, in the source countries.

67. Regarding some of the country-specific situations referred to in the present report involving the resort or threat of resort to embargoes, and in the light of the experience that he has gained in the fulfilment of his mandate with respect to a specific case, the Special Rapporteur recommends that the Secretary-General consider the appointment of a special envoy of the United Nations to promote, through quiet diplomacy, a meeting of minds between source and target countries on a case-by-case basis.

68. Where a specific country is targeted simultaneously by Security Council sanctions and by unilateral coercive measures, the Special Rapporteur suggests that his mandate should include regularly reviewing the compatibility of the latter with the former in terms of the human rights impact, with due consideration to be given to the most vulnerable population groups.

69. In its resolution 71/193, the General Assembly took note with interest of the proposals contained in the report of the Special Rapporteur, which referred to: (a) the establishment of a United Nations register of unilateral coercive measures likely to have a human rights impact; and (b) the adoption by the Assembly of a declaration on unilateral coercive measures and the rule of law reaffirming, inter alia, the right of victims to an effective remedy, including appropriate and effective financial compensation, in all situations where their human rights are adversely impacted by unilateral coercive measures (see A/71/287, paras. 37 and 39, and A/HRC/36/44). In its resolution 71/193, the Assembly also requested the Special Rapporteur to include in the present report "more information on the process regarding the discussions of his proposals at the Human Right Council". However, since the present report had to be sent in for processing before the holding of the relevant session of the Human Rights Council, the Special Rapporteur will provide the requested information in his oral report to the Third Committee of the General Assembly.